IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10549 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHAMMAD KAZIM

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 10549 of 1999

MR MUKESH H RATHOD for Petitioner No. 1

MR SAMIR J DAVE A.G.P. for Respondent No. 1-2

MR KETAN A DAVE for Respondent No. 3-5

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 24/06/2004

ORAL JUDGEMENT

The petitioner has challenged the order dated 12th May, 1998 whereby, the Ministry of Labour, Government of India, has refused to make Reference under

on the ground that the dispute has been raised after a lapse of more than nine years without any justification for the long delay.

1.1. The petitioner was engaged as a casual labour by the Telecom Department, Surat with effect from 1st June, 1985. After serving for about two years his request to reinstate him in service was not acceded to. Ultimately, he made complaint on 11th March, 1997 before the Conciliation Officer i.e. Assistant Labour Commissioner (Central) at Baroda. Since the conciliation proceedings failed, failure report was submitted. The competent authority was requested to make Reference under Section 10 of the Industrial Disputes Act. However, the Ministry of Labour, Government of India, vide communication dated 12th May, 1998 addressed to the General Manager, Telecom District, Surat and also the petitioner, intimated that in reference to the failure of conciliation report dated 30th June, 1987 from the Assistant Labour Commissioner, Baroda, received by the Ministry on 7th July, 1987 had prima facie, considered the dispute not fit referring it for adjudication, for the reason that the dispute was raised after a lapse of more than nine years without any justification for long delay.

1.2. It is this order which is now sought to be challenged in this petition under Article 227 of the Constitution of India.

2. The respondents have contested the petition by filing affidavit-in-reply. Mr. Ketan Dave learned advocate for respondents nos. 3 to 5 has submitted that the concerned authority is at liberty to examine the question regarding making Reference and if it finds that there is no justification for the delay, which can refuse to make the Reference.

3. Having heard Mr. M.H. Rathod, learned advocate for the petitioners and Mr. Samir Dave, learned A.G.P. for respondents nos. 1 and 2 and Mr. Ketan A. Dave learned advocate for respondents nos. 3 to 5, it is clear that the request for the reference is not acceded to, solely on the ground that the dispute has been raised at a belated stage and unjustifiable reasons have been advanced for the delay.

3.1. It is by now a well settled proposition of law that the request for making reference cannot be turned down solely on the ground of delay. The Apex Court in the case of Ajaib Singh v/s. Sirhind Cooperative Marketing-cum-Processing Service Society Ltd. reported

in AIR 1999 S.C. p. 1351 has held that provisions of Article 137 of the Schedule to the Limitation Act are not applicable to the Industrial Disputes Act and relief cannot be denied to workman merely on the ground of delay. Similar view has been taken by the Apex Court in the case of Sapan Kumar Pandit v/s. U.P. State Electricity Board reported in 2001 III CLR p.16. This Court has also followed the said judgment and taken the same view in the judgment rendered in the case of Mazdoor Kalyan Sangh v/s. Government of India in Special Civil Application No. 2001 of 1994 dated 16th April, 2004.

4. In view thereof, and in view of the decisions which have been referred to above, this petition deserves to be allowed. The impugned order dated 12th May, 1998 is quashed and set aside. The Competent Officer is directed to reconsider the demand and make the reference. The petition is allowed. Rule made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

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